

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

JOE RODERICK, )  
                        )  
                        )  
Plaintiff,         ) Civil Action No. 0:07-3026-CMC-BM  
                        )  
                        )  
v.                     )  
                        )  
ANTHONY J. PADULA, Warden     ) **REPORT AND RECOMMENDATION**  
Lee Correctional Institution,    )  
BRUCE OBERMAN, SMU             )  
Administrative,                 )  
                        )  
Defendants.         )  
\_\_\_\_\_  
                        )

Plaintiff originally filed this action in the South Carolina Court of Common Pleas for Richland County. Defendants subsequently removed this case to federal court based on federal question jurisdiction.

The Defendants filed a motion for summary judgment on January 31, 2008, pursuant to Rule 56, Fed.R.Civ.P.. As the Plaintiff is proceeding pro se, a Roseboro order was entered by the Court on February 4, 2008, advising Plaintiff of the importance of a motion for summary judgment and of the need for him to file an adequate response. Plaintiff was specifically advised that if he failed to respond adequately, the Defendants' motion may be granted, thereby ending his case.

Plaintiff thereafter filed a motion for an extension of time on March 3, 2008, and by order of the Court issued March 6, 2008, Plaintiff was granted an additional thirty (30) days to respond to the Defendants' summary judgment motion. However, notwithstanding the specific warning and instructions as set forth in the Court's Roseboro order, Plaintiff never responded to the Defendants' motion.

As the Plaintiff is proceeding pro se, the Court filed another order on April 10, 2008, granting the Plaintiff an additional ten (10) days in which to file his response to the Defendants' motion for summary judgment. Plaintiff was also specifically advised that if he failed to respond, this action would be recommended for dismissal with prejudice for failure to prosecute. Davis v. Williams, 588 F.2d 69, 70 (4th Cir. 1978), Rule 41(b) Fed.R.Civ.P. However, notwithstanding this warning and having been granted two (2) extensions of time, the Plaintiff still has not responded to the motion for summary judgment, and has therefore failed to indicate that he wishes to proceed with this case or to prosecute this matter in any way.

Accordingly, it is recommended that this action be dismissed with prejudice for lack of prosecution.

The parties are referred to the Notice Page attached hereto.



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Bristow Marchant  
United States Magistrate Judge

Columbia, South Carolina  
May 15, 2008

### Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
901 Richland Street  
Columbia, South Carolina 29201

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).